

Approved as Submitted: April 2, 2003

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – MARCH 19, 2003**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the special meeting to order at 5:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Sellers, Tate (via telephone for closed sessions only) and Mayor/Agency Chairperson Kennedy  
Late: Mayor Pro Tempore/Vice-chair Chang

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**

**EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)

Case Name/Number: Santa Teresa Citizen Action Group et al. v. California Energy Commission (California Third District Court of Appeals, C041090); Santa Teresa Citizen

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Action Group et al. v. Hearing Board of the Bay Area Air Quality Management District (San Francisco Superior Court, CPF-02-50164); Santa Teresa Citizen Action Group et al. v. Calpine Corporation (Ninth Circuit Court of Appeals, 01-701611).

4.

**EXISTING LITIGATION:**

Case Title: Kennedy et al. v. Davis et al.  
Case Name/No.: Santa Clara County Superior Court Case No. CV 803679  
Attendees: City Manager, City Attorney, Special Counsel Matt Jacobs

5.

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority: Government Code Section 54957.6  
Agency Negotiators: Ed Tewes, City Manager; Helene L. Leichter, City Attorney; Mary Kaye Fisher, Human Resources Director

Employee Organization: AFSCME Local 101  
Morgan Hill Community Service Officers Association  
Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker  
Government Access Technician  
Maintenance Worker Assistant  
Utility Worker Assistant

Executive Management Group 1-A

Chief of Police  
Director of Business Assistance & Housing Services  
Director of Community Development  
Director of Finance  
Director of Public Works/City Engineer  
Human Resources Director  
Recreation and Community Services Manager  
Assistant to the city Manager  
Council Services and Records Manager

Middle Management Group 1-B

Police Captain  
Deputy Director of Public Works  
Assistant City Attorney  
Assistant Director of Finance  
Chief Building Official  
Human Resources Supervisor  
Planning Manager  
Senior Civil Engineer  
Budget Manager  
Business Assistance and Housing Services Manager  
Police Support Services Supervisor  
Senior Planner  
Project Manager  
Utility Systems Manager  
Recreation Supervisor

Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C  
Administrative Analyst  
Secretary to the City Attorney  
Accounting Technician  
Human Resources Assistant

### **OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 5:33 p.m.

### **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Manager/Executive Director Tewes announced that no reportable action was taken in closed session. He indicated that a couple of the closed session items were continued to the conclusion of this evening's meeting agenda.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairperson Kennedy, Lori Escobar led the Pledge of Allegiance.

### **PROCLAMATIONS**

Mayor Kennedy presented a proclamation to Mala Nichani, American Cancer Society, recognizing March 2003 as Colorectal Cancer Awareness Month.

### **RECOGNITIONS**

Mayor Kennedy presented Paul Staudenmaier with a Certificate of Recognition, acknowledging his award from the Santa Clara County Emergency Manager's Association as Morgan Hill Citizen-Volunteer of the Year.

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## **PRESENTATION**

Roccie Hill, Executive Director of the Housing Trust of Santa Clara County, thanked the City Council for the allocation it made to the Housing Trust a couple of years ago. She presented a brief update on what has taken place in the County of Santa Clara and in Morgan Hill since the allocation was granted. She announced that the Housing Trust fundraising campaign was the single most successful capital campaign in the history of Silicon Valley, raising over \$20 million over an 18 month period. She said that the success of the program was due to the County of Santa Clara and the Cities and Towns in the County as every entity contributed to the campaign. She indicated that approximately \$9.5 million has been loaned to three program areas with 1/3 of this amount going toward affordable multi family rental units, 1/3 to first time buyers, and 1/3 to homeless and special needs developments. She distributed to the Council an informational packet that contained a fact sheet that provides updates on Housing Trust loans. She informed the City Council that last November, because of the success of Proposition 46, the Housing Trust launched a new fundraising campaign of \$2 million to be raised within the community. If the Housing Trust can raise \$2 million within the County, they would be able to match the \$2 million, drawing into the County brand new dollars from Proposition 46 bond measure set asides. She stated that she would report back in greater detail as things develop over the coming months.

## **CITY COUNCIL REPORT**

Council Member Sellers reported that the Legislative Committee monitors legislation, particularly at the State level, that impacts the City of Morgan Hill. He said that the Committee is focusing in three areas: 1) monitoring the State budget; 2) reviewing legislative initiatives relating to providing affordable housing; and 3) fiscal reform, indicating that there is a movement to improve the way Sacramento allocates funding and operations. He said that the current system is such that cities have to wait to see what is done with the State budget, noting that the last few years; the budget process has been very late. The Committee currently investigates fiscal reforms to be undertaken. He stated that there are a couple of bills that the Committee is tracking, including initiatives that will significantly change the way the state budget is handled. He said that the Committee is looking at issues that are impacted by other committees, including ABAG and Cities Association Legislative Committees. The Committee has talked about ways to coordinate these efforts. He requested that staff agendaize discussion regarding the ABAG and MTC merger for the March 26 meeting so that the Council can provide input.

Mayor Pro Tempore Chang indicated that the ABAG Executive Board is meeting tomorrow night in Oakland. She stated that Cities Association board members have already endorsed the setup proposed by a subcommittee consisting of Dave Cortese and Tom Springer as well as others. She indicated that she would be attending this meeting as the alternate representative from the Cities Association to vote on the issue.

Council Member Sellers said that as an alternate to the City-School Liaison Committee, he ended up chairing the March 14 meeting due to a variety of scheduling conflicts. The Committee discussed efforts following the tragedy at Britton Middle School and how the City, paramedics, and police officers did an outstanding job in coordinating efforts to mitigate the effects of the horrible tragedy. The Committee talked about the progress being made at the Sobrato High School as well as a variety of other

issues. He felt that it was vital to continue coordinating efforts with the School District as they move forward on projects that the City coordinates with them. He addressed the California Home Performance Program, indicating that it is an opportunity for individual households to have an audit of their household energy and other uses, providing recommendations on how individuals can improve these uses. He felt that this was an exciting program and that he would be forwarding this information to staff as it may be information that the City may want to publicize in the weeks ahead.

### **CITY MANAGER REPORT**

City Manager Tewes reported that the Governor has signed a bill that amends the current State Budget by making a series of reductions, indicating that school districts are included in reductions in the Governor's packet but that cities are not. He said that the Governor initially proposed reducing the allocation of motor vehicle license fees and sweeping Redevelopment Agency accounts that had housing monies. He indicated that the proposal that passed the senate and assembly and signed by the Governor does not include these. However, in his message in signing this bill, the Governor made it clear that the amount of reductions that were sent to him were insufficient for the long range solution and that he anticipates that even deeper cuts would need to be made in next year's State budget. He addressed the City's ongoing testing of its water system in order to ensure the public that the City is continuing to deliver safe drinking water. He said that with all of the concern about perchlorate, the City began a testing regiment in January of testing all city wells on a monthly basis. He indicated that in the first testing conducted in January 2003, the City used the State's testing mandates and protocols, noting that none of the City wells had any detectible levels of perchlorate. However, last month, staff reported that there were trace levels in two wells: Nordstrom and Condit wells. He indicated that the confirming samples showed no detectible levels of perchlorate in these two wells. The City took a conservative approach in protecting the public's water supplies, taking these two wells off line pending further testing and evaluation of the perchlorate situation. He indicated that the latest test results received yesterday and today show that all but one of the City's wells are at the non detectible levels, including the Nordstrom and Condit wells. However, the one Dunne well, in the same general vicinity, has a trace amount of perchlorate at 4 parts per billion. This does not exceed the action level but that consistent with the City's conservative approach, this well has been taken off line and that the City would be seeking confirming samples. He said that the results remain ambiguous but one thing is clear, there are trace levels of the chemical perchlorate north of the Olin site. Therefore, the City must continue to monitor the wells and protect the public's health and safety with the water supply. He noted that later in the evening, the Council will be considering a series of actions relating to emergency actions to drill new wells and provide additional sources of water supply to meet the City's demand during the summer.

Director of Public Works Ashcraft acknowledged that the City is being more aggressive than is required by the State Health Department who regulates the City's water department. He confirmed that the City has its third well off line pending further tests. He said that staff would be returning to the Council with a report of additional test results on these issues.

Council Member Sellers requested that the City release water results as soon as they become available. Mr. Ashcraft indicated that the current results have been presented to the media this evening and that the results will be posted on the city's web page tomorrow.

## **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening, but noted that she distributed the monthly Litigation Summary this evening to the Council.

## **PUBLIC COMMENT**

Mayor Kennedy opened the floor for public comment on items not on the agenda. No comments were offered.

## ***City Council***

## **CONSENT CALENDAR:**

Council Member Sellers requested that item 7 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Items 1-6 and 8-12 as follows:*

1.        **FEBRUARY 2003 FINANCE AND INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

2.        **ACCEPTANCE OF THE COMMUNITY AND CULTURAL CENTER PROJECT AND AMENDMENT TO CONSULTANT AGREEMENT**

**Action:** 1) **Accepted** as Complete the Community and Cultural Center Project in the Final Amount of \$11,846,252.00; 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office; and 3) **Authorized** the City Manager to Execute a Second Amendment to the Consultant Agreement With Pacific Geotechnical Engineering for the Project, Subject to City Attorney Approval.

3.        **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR SAN PEDRO-GIANCOLA**

**Action:** 1) **Adopted** Resolution No. 5655, Accepting the Subdivision Improvements for San Pedro-Giancola; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

4.        **LOT MERGER FOR JACKSON OAKS BOOSTER STATION**

**Action:** 1) **Approved** the Merger of the Two City Owned Parcels for the Jackson Oaks Booster Station Rehabilitation Project; and 2) **Authorized** the City Manager to Execute the Necessary Documents for the Parcel Merger.

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5. **MEDICAL RESERVE CORPS GRANT/ OFFICE OF THE SURGEON GENERAL**  
*Action: 1) Approved and Accepted \$78,490.00 Over a Three Year Period, to Support the Medical Reserve Corps Grant Project.*
  6. **APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH CHRISTEPH DRIVE PROPERTIES**  
*Action: 1) Approved the Subdivision Improvement Agreement; and 2) Authorized the City Manager to Sign the Agreement on Behalf of the City with Christeph Drive Properties.*
  8. **CLEAN VEHICLE RESOLUTION**  
*Action: 1) Adopted Resolution No. 5653, Supporting Purchase of Cleaner Vehicles.*
  9. **AUTHORIZATION TO APPLY FOR A CODE ENFORCEMENT GRANT**  
*Action: 1) Adopted Resolution No. 5659, Authorizing the City Manager to Execute a Grant Application for Code Enforcement Activities.*
  10. **ADOPT ORDINANCE NO. 1610, NEW SERIES**  
*Action: Waived the Reading, and Adopted Ordinance No. 1610, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DELETING SECTIONS 10.56.010 THROUGH 10.56.060, INCLUSIVE, AND SECTION 10.56.090 AND AMENDING CHAPTER 10.56, CHAPTER 10.64 AND CHAPTER 10.68 OF THE CITY OF MORGAN HILL MUNICIPAL CODE REGARDING BICYCLES AND COASTER OPERATION, AND FINES THEREFORE by the following vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.*
  11. **LEGISLATIVE PRIORITIES**  
*Action: 1) Approved the City of Morgan Hill Legislative Agenda; and 2) Authorized the Legislative Subcommittee to Direct Staff to Communicate the City's Legislative Position on Issues When a Position is Consistent with the Legislative Agenda.*
  12. **JOINT SPECIAL CITY COUNCIL AND SPECIAL PLANNING COMMISSION MEETING MINUTES OF MARCH 5, 2003**  
*Action: Approved the Minutes as Written.*
  7. **ESTABLISH SISTER CITY RELATIONSHIP WITH SAN MARTIN DE HIDALGO, MEXICO**

Mayor Kennedy indicated that the action before the Council would establish a second Sister City with San Martin De Hidalgo, Mexico.

Chuck Dillmann said that this is the next step in a relationship that started last spring when Jess Ambriz, from Morgan Hill, visited San Martin de Hidalgo and performed a preliminary investigation of mutual

interest. Mr. Ambriz returned with an agreement to pursue San Martin de Hidalgo further. In August, a delegation consisting of 8 individuals, including the Mayor from the City of San Martin de Hidalgo visited Morgan Hill. It was felt that the fit was good in terms of demographics; an agricultural community trying to move toward high tech; they offer a lot of the same agricultural businesses; they have a lot of enthusiasm; and they are interested in a youth exchange program. For these reasons, the Sister Cities Committee believes that the City needs to move forward and put together a program, culminating a relationship with a formal signing in the summer. He said that this would be a natural extension of the Sister City relationship with Italy that will hopefully include Yugoslavia and/or Serbia. He requested that the Council move forward with the Sister City relationship as it would be a good fit for the City's ethnic community.

Mayor Kennedy indicated that San Martin de Hidalgo is located in the Jalisco province and is located approximately 50 miles south of Guadalajara. It was his understanding that it is a beautiful community.

Council Member Sellers noted that there are two local corporations doing business with San Martin de Hidalgo (Sakata Seeds and Chiala Farms) with the hope that this relationship would increase in years to come.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent: 1) **Adopted** Resolution No. 5652, Establishing a Formal Sister City Relationship With the City of San Martin de Hidalgo, Mexico Upon Receipt of a Reciprocal Resolution; and 2) **Authorized** the City Manager to Do Everything Necessary and Appropriate to Establish the Relationship.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that a staff report be presented on Consent Calendar items 13 and 14.

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Chang, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **Approved** Consent Calendar Items 15 and 16 as follows:*

**15. REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 26, 2003**

**Action:** ***Approved** the Minutes as Written.*

**16. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 5, 2003**

**Action:** ***Approved** the Minutes as Written.*

**13. APPROVAL OF COOPERATIVE AGREEMENT FOR CYCLE II PROPOSITION 14 LIBRARY BOND ACT GRANT APPLICATION**

Recreation and Community Services Manager Spier presented the staff report for Consent Calendar Items 13 and 14.

Council Member Sellers said that he was in Sacramento recently and that he had the opportunity to speak briefly with the State Treasurer as he is a voting member on the Library Grants. He indicated that the State Treasurer is well aware of Morgan Hill's application. He praised Council Member Tate for his efforts on the City's Library Grant application and the fact that the City is strengthening the School/City portion of the application.

Mayor Kennedy said that the Council met with Senator Bruce McPherson and that this was one of the issues raised. He indicated that Senator McPherson agreed to contact State senators to encourage their support of the City's application.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Cooperative Agreement Between Morgan Hill Unified School District, Morgan Hill Public Library and City of Morgan Hill for the Cycle II Proposition 14-Library Bond Act Grant Application.*

**14. RESOLUTION FOR CYCLE II PROPOSITION 14 LIBRARY BOND ACT GRANT APPLICATION – Resolution No. 5654**

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, 1) **Reviewed** Draft Grant Application; and 2) **Adopted** Resolution No. 5654 Authorizing City Staff to Submit Grant Application to the California State Office of Library Construction.*

***City Council Action***

**CONSENT CALENDAR (CONTINUED):**

Mayor Kennedy indicated that he would be recusing himself from Agenda Item 17 as he resides within 500 feet of the property. He excused himself from the Council Chambers.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Approved** Consent Calendar Item 17, as follows:*

**17. ADOPT ORDINANCE NO. 1609, NEW SERIES**

**Action:** ***Waived** the Reading, and **Adopted** Ordinance No. 1609, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT*

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*PLAN FOR A 15-UNIT SINGLE FAMILY PROJECT LOCATED WEST OF HILL ROAD AND NORTH OF CONTE WAY, IN AN R-1(12,000)/RPD ZONING DISTRICT (APN 728-10-005; ZA-02-11: SHAFER-BAMDAD) by the following vote: AYES: Carr, Chang, Sellers; NOES: None; ABSTAIN: None; ABSENT: Kennedy, Tate.*

Mayor Kennedy resumed his seat on the dais.

**PUBLIC HEARINGS:**

**18. SOLID WASTE MANAGEMENT RATE ADJUSTMENT – Resolution No. 5651**

Assistant to the City Manager Eulo presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Refuse Rate Resolution No. 5651.*

**19. OUT OF AGENCY SERVICE REQUEST OSR-03-01: BURNETT-MORGAN HILL UNIFIED SCHOOL DISTRICT/SOBRATO HIGH SCHOOL – Resolution No. 5656**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5656, Forwarding the Request to LAFCO.*

**20. ADJUSTMENTS TO USER FEES, SERVICE CHARGES, AND MISCELLANEOUS UTILITIES FEES – Resolution No. 5658**

Finance Director Dilles presented the staff report.

Mayor Kennedy opened the public hearing.

Dick Oliver, Dividend Development, referred to Attachment A, line item 36, the final Measure P review cost increase in fees. He noted that the schedule reflects a current fee of \$4,415 and that these fees were raised from \$3,000+ from the previous year. Next year, the fee goes up to \$6,600 and increases each year. He noted that the annual increase includes a CPI. He inquired how the CPI is calculated and from what period is it to be calculated. He supported full cost recovery for the City but requested that the Measure P process be streamlined so that it does not cost the City the amount of money identified to process Measure P, noting that it is costly for a developer to put a Measure P application together. He

recommended that the City conduct an analysis because he felt that there is better use of the City's resources and developers' money as this cost is passed on to the homebuyers. He indicated that he addressed his comments to the Measure P Update Committee on how to streamline the process. It was not known how the process could be streamlined due to the constraints in the existing Measure P. He indicated that he serves on the Committee that is looking at the initiative to revise Measure P and that he was not sure that the Committee came up with any meaningful suggestions to streamline Measure P that would save a lot of money in the process.

No further comments being offered, Mayor Kennedy closed the public hearing.

Council Member Carr indicated that the Measure P Update Committee discussed streamlining the Measure P process and that Mr. Oliver and staff spent time evaluating streamlining Measure P. He felt that to a certain degree, some suggestions are proposed for implementation. He said that the review is what makes Measure P. He was not sure if you could take much out of Measure P without dismantling Measure P entirely.

Director of Community Development Bischoff stated that when he met with Mr. Oliver and other members of the development community, there were discussions about changes. Some of the changes would require an amendment to the Measure P initiative. However, several of the changes would only require an amendment to the City's ordinance that implements the initiative. He indicated that the City can change the ordinance without a vote of the electorates. He stated that he also met with most of the departments involved in the Measure P review process. Staff discussed what they thought could be done to streamline the process. Most of the ideas that staff came up with involved amendment to the ordinance as opposed to amending the initiative. He stated that he would agree to reconvene staff and seriously discuss amending the ordinance to help streamline the process. He indicated that the cost mentioned by Mr. Oliver is an increased cost that needs to be reduced. However, the cost does not include other costs. He said that the initiative requires quarterly reports be prepared and that this cost is factored into the fees. The initiative in place today also requires that the Planning Commission review Measure P and determine amendments needed on a yearly basis. He indicated that Measure P is a year round endeavor for City staff and that it is a major project. With the ideas that were generated by the development community and staff, he felt that a dent could be made to the cost next year.

Finance Director Dilles responded to the question relating to the CPI, indicating that it is based upon the inflation area factor of the previous year. He said that staff does not know the exact number at the end of June to implement the CPI in July. Therefore, staff would be using the year end of the previous April as an approximation of what the CPI would be for June. He stated that it would be the intent to pick up where the City left off in fee calculations and to start capturing the difference caused by inflation as the City moves forward. Should there be a deflationary effect, it would be taken into account. He said that it is proposed that whatever happens to the cost of living as measured by the federal Consumer Price Index, the fees would be adjusted by this number by the end of each year. He noted that Mr. Oliver mentioned that it would take \$1/4 million in fees to implement Measure P. He stated that the consultant's number shows that the City would be collecting approximately \$180,000 based upon the number of applications submitted. This number has been rolled into the process.

Council Member Sellers said that it is the goal for the City to achieve \$180,000. Should the City receive 25 applications in one year, he inquired whether the \$180,000 would be divided by the 25 applications. He further inquired whether the fees would result in developers paying less than \$10,000 or would the fees be based on the number of applications.

Mr. Dilles said that the study was staff's best estimate. He said that if there were more applications, the City would collect more money and that if there were fewer applications, the City would collect less money. If City staff knows that the best guess would be different, the City should adjust the fees downward or upward to reflect true costs.

Mayor Kennedy noted that there may be some work that can be done by revising the City's local ordinance to perhaps cut down the cost and the complexity of the Measure P process.

Council Member Sellers stated that it was his understanding that the Measure P Update Committee was considering a two year process and inquired whether this was still being seriously considered.

Council Member Carr indicated that the Measure P Update Committee is recommending multi year competitions.

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5658.*

**21.    ZONING AMENDMENT APPLICATION, ZA-01-18: COCHRANE IN-N-OUT BURGER/APPLEBEE'S**

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Continued** Public Hearing to April 2, 2003.*

**22.    OUT OF SERVICE AREA REQUEST OSR-03-02: ANDERSON LAKE-COUNTY OF SANTA CLARA – Resolution No. 5660**

Director of Community Development Bischoff presented the staff report.

Council Member Sellers inquired whether this action would help expedite the construction of the boat ramp.

Mayor Kennedy opened the public hearing.

Mohammad Asif, Santa Clara County Parks Department Project Construction Manager, indicated that the project is approximately 90% complete other than the boat ramp and the landscaping. He said that County Parks missed the deadline for the Fish and Game and the Regional Water Quality Control Board

to construct the boat ramp within the time limit. He said that on March 21, 2003, testing of the concrete samples/spray sealant to occur so that the hydroxide would not migrate from the concrete to the lake. He said that the County has a plan to construct the boat ramp up to elevation 590, resulting in a 340-foot concrete ramp with a portion of the lower ramp constructed with a pre cast concrete element. It is County Parks hope to open the boat ramp by the end of May or early June 2003. He indicated that this would not be the end of the project as there is still another 125-feet of the lower portion of the ramp to be completed in the fall when the lake is low in order to complete the project. He indicated that the pre cast concrete would be made permanent.

Chuck Dillmann said that there a number of homes in Holiday Lake that are on septic systems and are experiencing problems. He indicated that he was looking at a piece of property on Hoot Owl where the existing septic tank is in bad shape. He informed the Council that County Health staff has indicated that the property owner cannot install a new septic system. He felt that the City and County need to look at this area and provide sewer to the homes in the area as it may result in homes being abandoned.

No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5660, Forwarding Request to LAFCO.*

**23. ZONING AMENDMENT ZA-02-21: CITY OF MORGAN HILL-AMENDMENT OF ZONING MAP – Ordinance No. 1611, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1611, New Series.*

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council **Introduced** Ordinance No. 1611, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 559 NEW SERIES, BY ZONING PROPERTIES IN VARIOUS LOCATIONS THROUGHOUT THE CITY TO MAINTAIN CONSISTENCY WITH THE GENERAL PLAN. (ZA-02-21: CITY OF MORGAN HILL-AMENDMENT OF ZONING MAP) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.*

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**24. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ALLOCATION  
(FY 2003-3004) – Resolution Nos. 5661 and 5662**

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Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Kennedy opened the public hearing.

Dina Campeau, Emergency Housing Consortium (ECH), thanked the Council for its fiscal and moral support in the community. She was grateful to the citizen volunteers of Morgan Hill. She indicated that there is a new service available; Outreach Court. She indicated that this is collaboration with the County court who works with homeless and mentally ill individuals who have status offenses and other kinds of legal problems that are preventing them from moving forward on their quest for stability and independence.

Council Member Chang inquired how an individual can report/assist a homeless individual. Ms. Campeau indicated that EHC has the winter shelter opened and that these individuals can be referred to the San Martin shelter. She indicated that EHC has case workers who could work with individuals.

George Nale, Live Oak Adult Day Services, indicated that this Agency is celebrating 20 years of senior care in Santa Clara County and 10 years in Gilroy. He addressed the services provided. He requested additional money as funding from other sources has been reduced. He indicated that he would look into a local Morgan Hill phone number for residents to use.

Helena Fox, Program Manager for Day Break Catholic Charities, thanked staff and Council members for the recommended funding. She indicated that this program provides in home respite services to seniors.

Donna DMinico, Catholic Charities Long Term Care Ombudsman Program, thanked the Council for its support. She indicated that this program has exceeded its mid year objectives and continue to investigate a number of unusual complaints for individuals in Morgan Hill. Besides investigating a number of allegations of abuse and neglect, the program looks into allegations of medical discrimination, illegal evictions procedures, and personal property being lost or stolen. She stated that complaints are responded to fairly quickly, within 24 hours for abuse cases.

Renee Rodriguez, Housing Specialist with Catholic Charities of Santa Clara County, addressed the unique work being provided in Depot Commons in Morgan Hill. She thanked the Council for its continued support of this program. She addressed success stories of the program.

Cindy McCoun, Director of Services for Second Harvest Food Bank, indicated that the request before the Council is for the Operation Brown Bag Program. She indicated that this is one of 74 sites that Second Harvest Food Bank operates, indicated that the service area is from South San Francisco to Gilroy. She said that what is being seen is that many of the seniors participating in the service are relying on other volunteers to perform home delivery. She indicated said the needs of individuals seeking services, particularly in South County, are far exceeding the amount of food coming in; a trend being seen in the past 18 months. She thanked the Council for its long time support.

Lori Escobar, Program Director for Community Solutions - El Toro Youth Center, thanked the Council for its support and for the opportunity to continue serving Morgan Hill. She indicated that the program has added a couple of other youth sites: Ciolino and the Willows Apartment complex. She said that the program has come a long way in the last 15 years in providing additional services and in developing a strong parental program.

Angela Coventry, Director of Safety and Support Services at Community Solutions, also thanked staff and the Council for its recommendation to fully fund La Isla Pacifica once again, a battered women's shelter serving South Santa Clara County. In addition to the emergency shelter and emergency food/clothing, the agency provides safety planning for all women and children who come through the shelter and also provides individual goal planning to help individuals seek an independent life; free from violence.

Mayor Pro Tempore Chang indicated that she would not be participating in the discussion or action relating to the Lighthouse project as she has a potential conflict of interest with Mr. Edwards.

City Attorney Leichter recommended that the Council segregate the Lighthouse Youth Center from the other agencies as Mayor Pro Tempore Chang can vote on the rest of the appropriations.

John Edwards, Director of the Lighthouse Youth Center, addressed the misunderstanding relating to the insurance requirements. He requested an increase in funding as he is the sole supporter of the facility. He stated that the hours of operation are Monday-Friday, 3-8 p.m.; 6-10 p.m. on weekends; and on Saturdays from 2-6 p.m. He said that the Lighthouse is short in funding and is bringing on additional staff to work with the youth.

Ann Marquart, Director of Project Sentinal, thanked the Council for past funding and the support given by the City. She indicated that assistance is given with tenant/landlord dispute resolution, mortgage counseling, first time home buying education, and predatory lending situations that may come up in the County.

No further comments being offered, the public hearing was closed.

Mayor Kennedy complimented staff for working out the allocations. He indicated that there were so many good requests and organizations that do wonderful work for the community and that this is appreciated. He stated that the funds available are limited and that funding resources/revenues are down; making the situation tougher.

Council Member Carr stated that it seems that the Council tends to fund a lot of on going services that it has funded in the past. He recommended that in the application, programs seeking funding identify how they met the prior year's goals. He recommended that the Council review measurable results of the City's investment from the previous year. He felt that it would be good to know that the Council reviewed whether or not an agency met the goals of what was funded in the previous year. He said that the Council has supported the Youth Empowered for Success (YES) Program, including the 40

developmental assets that are a part of this program. He said that the YES Program has talked about how the City can use developmental assets as one of the criteria when deciding how to use CDBG funds. He recommended that the development assets be used as an emphasis/focus in future years when looking at the different applications. He concurred with Mayor Kennedy that this is a tough economic year. He felt that staff has found creative ways to fund a lot of worthwhile programs, looking at demographics of the community and addressing growth areas. He thanked the agencies for the work that they do and to staff for putting together a recommendation for Council consideration.

Director of Business Assistance and Housing Services Toy informed the Council that staff conducts quarterly performance reviews during the course of the year. He said that staff could attach the most recent goal data in the reporting.

Mayor Pro Tempore Chang thanked those in attendance for the good work that they are doing.

Council Member Sellers noted that this is a lean year. He thanked the applicants in attendance this evening in letting the Council know what has happened in Morgan Hill in terms of achieving program goals and identifying accomplishments.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5661 for Allocation of FY 2003-2004 Federal CDBG Funds, deleting reference to the Lighthouse funding.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Authorized** the City Manager to do Everything Necessary for the Implementation of the CDBG Program, Including Execution of All Required Contracts.*

Mayor Pro Tempore Chang inquired as to the process in assisting homeless individuals?

City Manager Tewes indicated that the police department can be contacted and that a police officer would be assigned to assist an individual. Staff would be referring individuals to the proper support agency. He informed the Council that the City does not have a designated department or staff to address these kinds of needs. He said that there are trust funds that are administered by the YMCA, in their agreement with the City, that provide for emergency cash assistance to individuals who need emergency cash. This is not the case with the homeless people being addressed by Mayor Pro Tempore Chang.

Mayor Pro Tempore Chang and Mayor Kennedy requested that the homeless issue be agendized for a future meeting.

Council Member Sellers said that there are several short term and long term communication efforts that are being undertaken in the County. He indicated that earlier this year, the Council received a report on the coordination of the 211 phone line which is several years away but on its way. It is his hope that 211 will receive funding. He said that to the degree that the City can identify the right location and services

and make the appropriate referral of an individual to the needed services would be a great benefit. He requested that staff do what it can to coordinate this effort.

Ms. McCoun indicated that the Food Bank has an 800 number. She indicated that there is also an 800 number for shelter assistance. She said that City staff can provide an individual with a card that has phone numbers for the services needed in multi languages. She stated that she would provide City staff with a supply of these cards.

Mayor Kennedy requested that staff put together a fact sheet of all the programs and services by the agencies in attendance this evening, including the phone number of the contact person so that staff can refer individuals to the appropriate agency/individual.

City Manager Tewes said that there is a county-wide referral processes to which staff has access to. This information may be converted to the 211 phone number versus the 800 number. He said that staff has access to this data base at the police department and City Hall of a wider range of social services available to individuals in the community.

Council Member Sellers stated that this is a difficult year and that the City does not have a greater amount of resources. He requested that staff work with the Lighthouse Group as well as with the other agencies not being recommended for funding to identify other community resources. He felt that there were opportunities for service clubs and other opportunities to pick up some of the slack.

Mayor Pro Tempore Chang stepped out of the Chamber for the action to be taken on the Lighthouse.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-0 vote with Mayor Pro Tempore and Council Member Tate absent, **Adopted** Resolution No. 5662 for Allocation of FY 2003-2004 Federal CDBG Funds for the Lighthouse, as recommended by staff (roll over last year's allocation to this year).*

Mayor Pro Tempore resumed her seat on the dais.

## ***City Council***

### **OTHER BUSINESS:**

#### **25. SANTA CLARA COUNTY'S COURTHOUSE PROJECT**

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that last Friday staff met with County staff and their architect to talk about preliminary comments and to discuss how the proposed design best meets the architectural design guidelines approved for the project. At the meeting, the architect advised staff that some details would be provided as the courthouse moves through the design development process. The architect understood staff's concern, indicating that he would try to address them at that time. He stated that County staff has indicated to City staff that they

would like to work closely with the City during the design development process. He said that County staff understands the City's concern regarding the design elevations and would try to resolve these issues. He said that before the County could respond to City staff comments, they would like to hear the formal comments from the Council. Following comments, County staff would take the Council/staff comments and determine how they would prepare a response for Council consideration. He indicated that the County would not be making a presentation on the schematic design and would be providing the Council with more clarification as to the next steps. He stated that staff is recommending that the Council consider the County's presentation, provide comments on the schematic design and that it direct City staff to prepare and transmit formal comments to the County for consideration. He also recommended that the Council request that the County provide it with updates on the design development process. He indicated that the County will be conducting a public meeting on March 27 from 7-9 p.m. At that time, they plan to present the preliminary elevations as well as accept comments and input on the draft EIR for the project.

Keith Carruth indicated that he would accept, on behalf of the County, the letter of apology for how the prior meeting went as it acknowledged that some of the information was inaccurate. He said that County staff was bombarded with questions that he believed was a result of this information. He informed the Council that County staff made an offer to have the architects come down and present the schematic design with a model in advance of the meeting. He indicated that County staff was not taken up on this offer as a way to get the Council briefed and ready for this meeting. He advised the Council that in attendance were the project architect, construction management firm, project manager, County counsel and that the Courts have sent a representative as well to hear what the Council has to say. He stated that County staff has lived up to the letter/spirit of the agreement with the City. He presented a power point presentation relating to where the County is in the design process. He indicated that there are three players in this situation: 1) the County of Santa Clara that is funding the majority of the project and is leading the effort to design and have the courthouse built; 2) the State of California, Administrative Office of the Courts, represented by the local courts that the County is working with in providing a building, noting that the County and the Court systems are separate entities; and 3) the City of Morgan Hill. He identified the features and the buildings proposed. He indicated that the agreement speaks to the RDA finding the County a number of sites. The County selected a preferred site and that the RDA is to acquire said site. At the time the project was envisioned, the County had an assumption that they would use 6 acres of the site, indicating that it was believed that the site was 8.25 acres. There was some discussion about a police facility on the site, subsequently a fire station or another facility. He felt that the Butterfield site is a good site for the project.

Mr. Carruth identified the timeline for the project and the design process. He informed the Council that City staff was advised, on Friday, that the colors included in the schematic design have nothing to do with the colors of the facilities as no colors have been decided upon for the courthouse facility. He stated that the County holds monthly project briefings for which the District Attorney, Public Defender, Probation Department, General Services Agency, City of Morgan Hill and the Courts are assumed to be integral members. He stated that it was critical for all integral members to participate. He indicated that in the schematic design meetings, City staff attended two or three of the meetings, noting that several meetings were held dealing with the design when there was no representative from Morgan Hill in attendance. He noted that the Council complained at the last meeting that the design was finished and

that it did not have an opportunity to review the design. He said that the design was discussed as it evolved in each of the meetings. Individuals who attended the meetings were provided with the drawings presented at the meetings. The members who did not attend the meeting were sent minutes of the meetings. He said that on one occasion, the City's architect asked for copies of the drawings of a particular meeting and that the County forwarded the drawings, as requested. He felt that there was a communication problem about what information the City has/has not received and how the City has/has not participated.

Executive Director Tewes informed the Agency Board that Director of Business Assistance and Housing Services Toy was assigned this project, indicating that from time to time he attends meetings and that the contract architect also attends meetings, from time to time.

Mr. Carruth addressed the acreage reduction. He said that it was originally thought that the site was over 8 acres and that both the City and the County, in good faith, believed this to be true. It turns out that the acreage was not accurate. When the site survey was completed, it was found to be 7.75 acres. Therefore, the County went through a reduction. The County had to address storm water retention requirements. This reduced the surplus land to  $\frac{3}{4}$  acre, further reducing the land the site to  $\frac{1}{2}$  acre when the County reviewed storm water requirements. He said that the draft CEQA contains a recommendation that the County take the last  $\frac{1}{2}$  acre remaining and hold it for parking to 2020. He indicated that County staff kept the City apprized of the various issues. He said that the Council had a concern last time about the letter he sent prior to the Council meeting. He stated that he sent the letter on February 13, 2003, knowing that the Council was meeting on February 19, and that on February 14, 2003, the draft EIR was to be released. He said that the letter was to address the CEQA requirement and that he wanted the Agency Board to have this information prior to the meeting.

Mr. Carruth read Sections 16 and 17 of the RDA/County Agreement that addresses design. He summarized the County's view of the City's design guideline comments. He said that it was his belief that there are a set of standards in the guidelines that are mandatory and that the County has to live up to them. It was also his belief that there were other set of guidelines that were not mandatory. He indicated that the schematic design requirements includes the following: multiple entrances to be provide as the building is longer than 125 feet; 8 foot sidewalks around the facility; 30 foot setback; multiple entrances; exceeds required landscaping by 20%; designed a portion of the site as an orchard; designed the project to face four directions; utility equipment is not to be exposed (not on roof top); established a civic presence; focal points incorporated into the design; entrance oriented toward downtown; and that the project will meet the City's requirement of a pedestrian connection, noting that it has always been a part of the design. He indicated that he envisions use of stone. He indicated that a one story building is proposed with the exception of the Courthouse facility so as not to use as much of the site at the request of the City's contract architect. As a result of this request, inmate movement has been sited underground. He said that it turns out that the County needs the entire site but that the County did not know this fact at the time decisions were made. He stated that articulated bays are proposed and that the building is not a flat surface. He felt that the building would be very imposing and a high quality design. Looking toward the parking lot, he stated that the entryway is articulated. There will be a use of step back heights (village facade), the use of a pedestrian approach and a plaza. He said that the entry element is intended to give a traditional courthouse feel. He identified the focal point from Diana

Avenue. He indicated that a determination has not been made on the finishes and therefore the brick element is used as a suggestion. The setback and height give a sense of pedestrian scale. He presented buildings located near by that he believes most resemble the County's design, indicating that the height of the building will be 35 feet. He indicated that he heard comments expressed about the scale of the building not feeling like downtown. It was his belief that the way that the building was stepped back in accordance with the City's guidelines of 30 feet and being setback 40+ feet from the street will create a human scale. He did not believe that the design proposed is as massive as the downtown, acknowledging that there are lower buildings in the downtown.

Mr. Carruth said that the City's letter expressed some concern about the process. He identified the process undertaken to date. He indicated that monthly meetings have been held since April 2001. He felt that there were four conditions necessary for the agreement to function effectively: 1) consistent City representation at the meetings; 2) City needs to regularly attend the meetings; 3) County needs active and meaningful participation; and 4) effective communication being relayed to the Council on what takes place/information provided at the meetings. He said that County staff has tried to work closely with the City since the inception of the project and that the County wants to work closely with the City. He stated that monthly meetings are held by the County and that any Council Member and staff are welcome to attend. He said that he understood that Mr. Toy is the City's representative and that anyone that attends the meetings with him speaks for the Council. He noted that the City staff report states that before the County will respond to staff comments it would like to receive formal comments from the Agency Board. He indicated that this is not an accurate statement. He clarified that County staff was unwilling to respond because they were following the directions of the City Manager. He reiterated that it was important to have consistent city representative(s) attending the County meetings on a regular basis. He said that the design of the courthouse was actively taking place and that the City was not represented. He informed the Council that the City has had sample photographs of the project architect's work for 18 months. He stated that he was worried about how communication is taking place, how business is being done and how County staff might be able to help the Council with this regard to make the process go better.

Council Member Carr requested that Mr. Carruth provide the Council with a hard copy of the information presented this evening. He requested clarification of the need for two buildings and the statement presented about the separation of County and State.

Mr. Carruth addressed the two bills passed a few years ago. AB233 which was the first bill that started to split the courts from the State. This bill dealt with court operations, indicating that courts were to be taken over by the State. This part of the split has already occurred. He said that the second part of the split was addressed by SB 1732 passed this past year. This bill addresses how the facilities will be transitioned and calls specifically for negotiations to take place between the County and the State commencing July 1, 2003 through June 30, 2007 statewide. This will transfer all court buildings to the State of California. He indicated that the County will try to transfer the building to the State of California at the completion of the building. He stated that the County would retain ownership of the property from the justice office building and the related parking. The state would end up owning the courthouse and a portion of the parking lot. He said that at time of negotiations with the City, both parties knew that the split was in process. The agreement took into account the anticipation of this split.

Council Member Sellers said that there were several issues that he wanted to raise. He requested staff's comments on the issues as stated by Mr. Carruth.

Mayor Kennedy said that it appears that Mr. Carruth is stating that the City had ample opportunity to provide input into the process. It was his understanding that this was not the case.

City Manager Tewes said that it is likely that City staff did not attend all of the meetings. He stated that it was important to distinguish the issues that were discussed several weeks ago from the issues that are being discussed this evening. A couple of weeks ago, the Council addressed the site planning issues and the extent to which the County and the City were working together to identify both courthouse facilities and a facility for a police station. He indicated that there was discussion at that time about the extent to which the City had communicated. He said that Mr. Carruth has demonstrated this evening how the site has shrunk for the courthouse, leaving the City with no additional space on the courthouse project for a police station. Mr. Carruth reported that he conveyed to the City the Friday preceding the Council meeting that in their view, the EIR would require all of the courthouse property to be used. Therefore, there would be no opportunity for a police station. He was not sure that a perfect attendance record would have led to a different decision about whether or not the City and the County could have co located a police station. The issue of design, specifically the elevation, is one that is before the Council. He reiterated that staff had not yet received copies of the schematic designs and that it was indicated at the time that staff had not received the elevations but have since received them. In the last couple of weeks, staff has been focusing on the exterior design issues that are the subject of most of the design guidelines that the Council adopted and that the County acknowledged that they are required to meet as part of the agreement. He agreed that there could have been better cooperation. He indicated that he received the seven page detailed letter from Mr. Carruth this evening and that he provided Mr. Carruth a 3-4 paragraph response. He did not believe that it was useful to get into the textural readings of staff reports or e-mails.

Mayor Pro Tempore Chang recommended that the County and City move forward with the project. If the County is interested in the Council's comments, she would be willing to provide her comments, taking the project to the next step. She did not believe that it made sense to go backwards and recommended that both parties move forward.

Mayor Kennedy stated that he too would like to move forward and come up with a project that works for all parties. He was sure that the County and judges would want to have a facility that it would be proud of in Morgan Hill. He stated that the citizens of Morgan Hill would like a building that it would be proud of as well. He felt that it was important to get back on track and make sure that both agencies are working together cooperatively. He noted that City staff provided the County architect questions and comments. He recommended that the County respond to these questions.

Mr. Carruth informed the Council that County staff is not prepared to respond to the questions this evening because County staff was waiting to hear from the Council.

Council Member Sellers said that the City Manager addressed some of the initial issues. He concurred that it would be appropriate to move forward and discuss the project. He stated that he had several questions concerning the design. He indicated that he was never asked to participate in any pre meeting with the architect and that he did not know if this was an internal offer. He requested clarification on this issue. He stated that he would offer comments this evening based on the design presented. He stated that as both agencies move forward, comments be provided about the design and how it might proceed. He recommended that procedural issues be addressed so that it is ensured that there is adequate input henceforth with the right people, in the right context and that the process goes back and forth.

Mr. Carruth said that on March 7, he received an e-mail providing him some information and requesting that he answer some questions. He said that he answered these questions, provided some information and that he asked some questions. He stated in his e-mail that the County would be happy, in advance of the Council meeting, to have its architect bring the working model and spend time with the Council reviewing the model. This would have afforded Council the opportunity, prior to this meeting, to be fully informed. He indicated that he received no response to this offer.

City Manager Tewes felt that there was miscommunication because staff anticipated that County staff would be bringing the model to the meeting this evening.

Mayor Kennedy stated that he did not see that the design fits the Morgan Hill community. He felt that it is a building that fits a larger, cosmopolitan city like San Francisco or San Jose and that it appears to be out of context for Morgan Hill. When he thinks of a courthouse building for Morgan Hill, he thinks of courthouse buildings similar to that of Roseville where vertical elements are used. He felt that the proposed design gives the perspective of a long, horizontal box. He did not believe that this design fits Morgan Hill. He would prefer to see some vertical elements (e.g., pitched eve rooflines). He stated that he was not concerned about a 41-foot height limitation as long as the overall mass does not exceed this height. He stated that the height limitation was put into place by a previous City Council and that he was not sure whether the majority of this Council was still supportive of the existing height limitation.

Mayor Pro Tempore Chang said that she supports the current height limitation. She stated that she likes the pictures of the model as they have varied heights. She inquired whether it would be possible to change a portion of the design to provide a variation in the building roof height. She felt that the design of the project could be enhanced. She liked the design of the smaller building presented.

Mr. Carruth stated that he understood Mayor Kennedy and Mayor Pro Tempore Chang's concerns. He said that County staff would look into them. He said that there are some issues with the design that drives the exterior design. He stated that the flat on drawings of the elevations does not give justice to the building as you cannot see the buildings depth. He said that he would be happy to bring the model to the Council next week and walk it through the design.

Mayor Pro Tempore Chang stated that she would like to review the model.

Mayor Kennedy stated that he would like to take a tour with the County's architect and look at other courthouse buildings as it would be helpful. He felt that there were ways to make changes that would

not significantly affect the schedule that the County is on. He said that he likes some of the other designs of the County's architect but that he does not like the one proposed for Morgan Hill.

Mr. Carruth indicated that County staff would explore the possibility of a tour. He indicated that the colors presented do not represent colors to be used and that the colors were used to articulate the building. He said that the County has not made a decision on colors or exterior finishes.

Mr. Drulis, project architect, said that what is being articulated are breaks/bays that are set out six feet. Therefore, the design modulates in and out along the facade. He stated that there is a lot of articulation that is not shown in a two dimensional drawing.

Mayor Kennedy felt that the building appears to be very boxy. He requested that the architect explain how this design would fit in the community.

Mr. Drulis indicated that it is important to know that the drawings are two dimensional as he is in schematic design and that the building has been massed. He felt that review of the model would be the most informative exercise because the model would show the articulation of the building. He said that there is a level of detailing in this type of building that does not show up in the schematic design. He said that the design will utilize stone as it is a very noble and timeless material. He felt that the design of the building was high quality and felt that the curtain walls add scale and depth. He indicated that there are a lot of shadow lines in the building that are not showing. He was relying on the Butterfield elevation to give the building character with the use of material and modulating the facade. He felt that it would be important that the public visiting the building for the first time have a sense of a campus. He stated that he would be happy to go through the design in greater detail in a workshop setting next week.

Council Member Sellers indicated that the City recently completed a community center with the City going through a significant process. He stated that the Council was very hands on in the process. He said that there were several times that the visions for the community center were not in line. Therefore, the Council performed a lot of work upfront, particularly in the design process. He stated that the Council understands the difference between schematic and the design process, particular knowing when to/not articulate its thoughts. He felt that the architect did a good job in articulating certain elements (30' setback, tying project to downtown, incorporation of an orchard, etc.). He expressed concern with the massing of the design, understanding that the Council is viewing two dimensional drawings. He felt that the exterior feel of the building evoked a campus facility. He did not get a sense that the architectural elements, evident in the drawings, were reflective of the kinds of things that the community has evolved into. He said that the community had an early period of growth and development that is reflected in the downtown and a later period of growth reflected in residential elements. He shared Mayor Kennedy's thoughts that the height is not a big issue if it helps to break down the long feel to the building design. He understood that there are certain constraints that the interior requires of the design but that he felt that there was significant latitude that the County has in how the design is put together. He said that the materials, the box square feel, and the elongated feeling of the design were his primary concerns and that he would like to see them addressed. He supported a design workshop to address the concerns. He felt that the previous discussions were helpful and that it was more difficult than it should have been but that the discussion raised issues that the Council is bringing to the forefront. He stated that he is looking

forward in working together. He agreed that the courthouse would become a nexus and that he felt that it needs to be a positive element because it will be a significant facility. It was his hope that the County and City could work toward the design of the courthouse in a positive way. He thanked County staff and the architect for being in attendance this evening and what will be a start of a more successful process.

Council Member Carr inquired whether County staff is planning to conduct any public hearings in Morgan Hill where neighbors and citizens will get a chance to comment.

Mr. Carruth responded that a public hearing is scheduled for March 27, 2003 in the Council Chambers.

Council Member Carr inquired whether the point where the project grew in scale from 60,000 square feet was attributed to how the actual operations of the facility affected the design.

Mr. Carruth said that the increase in size occurred early in the programming. He stated that County staff made planning assumptions several years back that 61,000 square feet would be necessary. At the time County staff got into architectural programming, it was realized that the early planners left out some key spaces. He said that approximately 80-90% of the growth was attributed to what was left out and in other cases, things were bigger than anticipated. He said that it was also the County's goal to sell the City two-acres of the site, using this money to offset the cost of the project.

Council Member Carr said that as the project grew, it became uncomfortable to him.

Council Member Sellers said that the City's Fire Master Plan calls for a fire station to be located in the general vicinity of Butterfield Boulevard. He inquired if it would be possible to co locate a fire station on this site.

Mr. Carruth said that when he met with the Mayor and the City Manager a couple of weeks ago, the City brought a plan to County staff depicting a fire station on the property. City staff showed the fire station overlapping onto the County's building. He informed the Council that County staff committed, at this point, to go back and look at the site layout with the architect. It was determined that there had been an error on the City's part and that in fact the  $\frac{3}{4}$  acre area was large enough to site a fire station facility should the City purchase the property. County staff indicated that if it was the City's desire to co locate a fire station, the County would be willing to share an access and egress point with the City. However, County staff believes that the City can accommodate a fire station on the  $\frac{3}{4}$  acre site without County assistance. He indicated that the individuals who prepared the work for the City did not have the fire station accurately laid out on the land. He said that the County fixed this problem for the City and communicated this information to the City Manager.

City Manager Tewes stated that he made a number of points in the meeting to make clear that it was time to move forward to find opportunities for cooperation. It was his belief that opportunities for cooperation exist. He said that if the City is able to acquire the site from VTA, there would be ample opportunity for the fire station and to provide access with cross easements. He felt that the City and

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County is on the right path with this regard. He said that it is clear that there is not enough land on the courthouse site to provide for a fire station and that supplement land is needed.

Mr. Carruth said that the County did not offer to master plan the site because the agreement clearly states that the County would only master plan if there is excess land, noting that there was no excess land to offer.

Council Member Carr referred to the site layout, noting that Mr. Carruth stated that County staff tried to make the Butterfield side have a different feel from the other side. He expressed concern with this regard because it was his belief that as the City expands, Butterfield will be changing. It is his hope that this area becomes pedestrian active. As the acreage along Butterfield develops, he recommended that it be done with transit orientation, commercial and residential in mind. He recommended that County staff not look at the area as to what is there today but what will be developed along Butterfield. He stated his appreciation of the setbacks and the feel versus the feel of being right next to the downtown buildings. He said that he is concerned about the scale of the building and that any adjustments would be appreciated. He said that he gets a cold feeling from a cement/tilt up structure that is not attractive, warm or inviting to a downtown area. It was his hope that the facility will be a warm and inviting place for the employees and others who need to conduct business at this location. He was not sure whether the convenience factor was built into the project. He would like the design to be one that would be inviting. He noted that the drawings depict an administrative building being one story and the courthouse being two stories, indicating that the scale appears to be about the same.

Mr. Carruth felt that a presentation would be helpful to address the concerns. He clarified that finishes nor colors have been determined.

Mr. Drulis, project architect, said that it is more than likely that steel frame would be used and that the interior sheer walls will not be visible from the street. Also, metal stud framing will be used with the use of internal brace frames within the walls with some stucco. He said that noble exterior material will be used. He said that it was important to emphasize that he has not made a presentation of the materials to the County or to the user groups. He said that he would bring an array of pallet materials and start discussing them.

Mayor Kennedy said that it his vision that a plaza would be designed to open up the downtown area. He felt that the south plaza seems to be where the focus of the courthouse is. He felt that it would be better to flip the design and recommended that the main plaza be sited on the north side, closer to the Caltrain station. This would allow the use of walkway that crosses the Caltrain tracks and connects to Third Street, a major downtown street.

Judge Shapiro stated that he was in attendance not only as a member of the Santa Clara County Superior Court but that he and his family have been 19-year residents of the community, indicated that he and his family are very vested in Morgan Hill. He sees this project not only as to what it means to the court but what it means to the community. He looks forward to having the opportunity to sit in a state of the art court facility on Butterfield. He said that this project has been and will continue to be a collaborative project with three parties: 1) the City of Morgan Hill, 2) County of Santa Clara, and 3) the Santa Clara

County Superior Court. He stated that the process for collaboration and inclusion was set forth at the beginning. He said that the County and Court system will continue with this collaboration. It was elaborated this evening that everyone is on the same path, heading toward the same end and the same goal. He said that it is the paramount interest of the Court to be a good neighbor in the community; looking forward to a facility that will be a source of pride and benefit to the community. The Court remains supportive of the process and that the Court has tried to be very innovative in its thinking and progressive in its interaction with the other participants. The Court has found that the County has been receptive and responsive to the issues and concerns raised and have provided appropriate and complete access to all the materials. He was now satisfied that everyone will be on the same page in this regard. If the City has concerns that it wishes directed to the Court, he requested that these concerns be directed to either Melanie Conroy in Court Administration; Judge Jack Komar, Chair of the Court facility and construction Committee; or himself as he is vice-chair of this committee. He stated that the City can expect an expedited response to any of its issue. He indicated that the presiding Judge of the Court, Thomas Hanson, Judge Komar and himself wish the City to understand that they are committed to the construction of this project in a manner that meets the needs and expectations of all the participants.

No further comments were offered.

Council Member Carr inquired whether the Council agrees that City staff's comments can be addressed by the County.

**Action:**        *It was the consensus of the City Council that Morgan Hill staff's comments are to be addressed by the County.*

## **26.    EMERGENCY AUTHORIZATION FOR WELL DRILLING – Resolution No. 5657**

Director of Public Works Ashcraft presented the staff report and indicated that well drilling can commence on April 1<sup>st</sup> and be completed in 90-days. He informed the Council that Dick Oliver with Dividend Homes has been working with the City for the past year, talking about a future well site on top of Peet Road, near Cochrane Avenue. He said that staff has expedited this process over the past two weeks. With Mr. Oliver's help, even before Dividend Homes takes ownership of the property, the City has a draft agreement, subject to the approval of the City Attorney. He requested that the Council authorize the City Manager to sign the agreement so that the City can obtain an easement from the Ruge family that will be turned into a permanent deed in the future. He said that staff would like to appropriate \$640,000 of funds already appropriated in the current fiscal year for drilling an emergency well. He stated that the findings for the well waives the formal bidding process. He informed the Council that the site has not been tested for perchlorate to date, noting that this site is located 3.5 miles from the Olin site. He indicated that the site would be tested before the well goes on line. He informed the Council that the City will need to drill a whole and produce water from the hole to test it.

Mayor Kennedy requested that the City Manager have a hydro geologist review this location before proceeding with well drilling.

City Manager indicated that a test hole is made before you develop a producing well. Therefore, there is some level of investment in the test hole but that the major investment comes later when the producing well is developed.

Council Member Sellers inquired whether staff is anticipating seeking reimbursement from Olin Corporation, initiating any legal actions for recovery of City costs.

City Manager Tewes said that in light of Council earlier discussions, he anticipates that the City will be seeking reimbursement for these costs.

Mayor Kennedy opened the public comment.

Chuck Dillmann suggested that should problems continue and the City continues drilling wells and shutting down wells, the City look at a blending facility as a solution versus the continuation of well drillings. He recommended that the Council investigate alternate solutions and not continue to drill wells.

No further comments were offered.

Mayor Kennedy said that Mr. Dillmann's suggestion is consistent with his request that staff return with a presentation on the City's water system, looking at what the City has and the best way to ensure that it has the right water system for the community. He further requested that staff contact the Santa Clara Valley Water District to consider alternatives for possible emergency or long term surface water treatment to explore other concepts.

Council Member Sellers stated that the City is proceeding in a variety of fronts. However, the City needs to make sure that it can continue to deliver water within 90-days before the City faces a crisis in terms of sufficient water supply.

City Manager Tewes informed the City Council that he has personally held conversations with the general manager of the Water District. Both agree that it is likely that for San Martin, and perhaps for Morgan Hill and Gilroy, we must now begin a multi year process, leading to the development of a surface water treatment plant. He further informed the Council that the Regional Water Quality Control Board has given an order to Olin to come up with ideas for long range mitigations. Therefore, Olin will more than likely to be involved in the financing of such an improvement.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5657, Declaring the Need for This Emergency Expenditure.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Expenditure of Funds, Not to Exceed \$640,000 for Construction of Emergency Well.*

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## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **27. PARKS AND RECREATION COMMISSION PUBLIC PROJECTS FUNDING ALLOCATION AND RECOMMENDATION**

Recreation and Community Services Manager Spier presented the staff report and informed the Council that it was her impression, at the Parks and Recreation Commission (PRC) meeting, that they did not want to remove funds from any of the projects, specifically the indoor recreation center. When the PRC reviewed the allocations, it recommended funds from the Park Impact Fees be used to fund the outdoor sports complex, backfilling these fees within a year.

Executive Director Tewes clarified the financial condition of the Park Development Fund which is financed by Impact Fees. He indicated that the Agency Board adopted a budget of \$2.8 million that included approximately \$2 million to acquire park land. He stated that the Agency has not moved forward with park land acquisition. The affect of the PRC recommendation would be to defer this project. He said that the \$2.8 million appropriation is not an appropriation of all the available funds in this fund. The Park Development fund has other unappropriated funds which could be used for this purpose. He said that it could be possible to move the \$2.7 million dollars immediately, pursuant to the PRC recommendation, into the outdoor sports fund. This would not short change or defer any of the other projects with the exception of acquisition of new park land which the PRC has explicitly indicated was a lower priority than the outdoor sports complex. He said that staff concurs that that if this action is to occur, it would be appropriate to increase development impact fees to provide additional funding for the other activities. He said that the impact fee process does not work quickly and that the City can immediately replenish it as the City would be collecting it over the remaining build out period of the community. He felt that the cash flow was sufficient to accomplish the recommendation of the PRC. He said that the fifth item is not necessary in order to meet the cash flow of the first four items.

Vice-chair Chang indicated that the PRC did not know that there was another \$1.2 million in the fund balance.

Agency Member Carr inquired whether the City would be delaying any projects by moving \$2.7 million from the Park Development funds.

Executive Director Tewes said the one project that would be delayed is the purchase of unidentified park land(s) at a cost of \$1,940,000 that has been appropriated. He said that the City does not have sufficient cash flow to proceed with this project and transfer \$2.7 million to the outdoor sports fields. He stated that the PRC acknowledged that this would be the case and felt that the outdoor sports fields were of a higher priority than the acquisition of additional park land at this time. He indicated that the City collects impact fees on an on going basis and that when there are sufficient resources, the City can move forward with other projects. Therefore, it is a timing issue and not a question of whether or not they would ever be completed.

Chairman Kennedy opened the floor to public comment.

Bob Benevento, Morgan Hill Pony Baseball Association, stated that he was pleased to hear that the Agency Board would be moving forward with the outdoor sports complex and that funding would not be lost for this project. He felt that the outdoor sports complex would consolidate facilities for Pony Baseball, and Spirit/Pride Morgan Hill Softball programs. He said that members of these groups would appreciate the outdoor sports complex facility due to the overcrowding of existing facilities.

No further comments were offered.

Agency Member Sellers stated his support of the PRC recommendation to expedite the indoor recreation center. He felt that it was important that the Agency Board formally state that this project is a priority and get this project underway.

Agency Member Carr expressed concern that the Agency Board is still not addressing the real issue. He was convinced that the Agency Board would not be able to complete all Visioning projects, noting that the Agency is not willing to have this conversation. He did not know whether it was a conversation of extending the RDA cap in order to complete all projects or whether it was a conversation of prioritizations. He noted that last year, the Agency started a prioritization process to set aside pots of money dedicated to different projects. He started to realize that the City does not have enough money to move forward with all projects. He indicated that the Agency stated that it would identify where the dollars were coming from a year ago. At the end of last year, the Agency chose not to do this. However, the Agency acknowledged that it needed to increase funding for the aquatic center. He noted that Agency Member Tate identified his thoughts on increasing funds for economic development which everyone will agree is important. He has made arguments about increasing funds for housing. He felt that by continuing to take these kinds of action, the Agency is using a band aid approach and not addressing some of the core issues. He noted that the City is not moving forward with the outdoor sports complex. However, to move money out of the park fund at this time to put into the indoor recreation center would not get the project built any sooner. He felt that it was important to have the RDA prioritization discussion. He felt that the PRC has a priority; and that it may be different from that of the Agency Board. He expressed concern about moving forward in shifting monies out of an account that is generated from development impact fees into accounts that are generated tax increments. In order to shift funds from the development impact fees, the City would have to increase development impact fees to back fill funds that it believes are important. He did not believe that he has had the discussion well enough to be able to take monies away from other funds and increase development impact fees in order to take action this evening.

Vice-chair Chang said that increasing development impact fees was a suggestion to back fill the fees. She indicated that the current fields and the money for the fields are not counted in the development impact fee. She said that this is an action that the Agency Board needs to take at a later date. She noted that the City has approximately \$2.8 million in the park fund. She said that this is the same logic as taking money from the outdoor fields and transferring them into the aquatic complex. She indicated that the City advised individuals that it would retain the sports fields as part of the RDA election.

Agency Member Carr did not believe that \$2.7 million would be enough to develop the outdoor recreation center. He did not believe that the Agency Board should drain the account for the aquatics center and then backfill it with development impact fees.

Vice-chair Chang noted that baseball and softball leagues have been known to build their fields. She felt that a partnership with the baseball and softball leagues should be explored in order to make this project feasible.

Agency Member Carr stated that the recommendation and motion being made this evening would raise development impact fees without benefit of having the greater discussion as suggested by Vice-chair Chang.

Chairman Kennedy inquired whether the Agency Board could take the action to allocate funds in order to move forward. The Agency Board could then have the broader discussion being recommended by Agency Member Carr.

Agency Member Carr did not believe that the Agency Board needed to take any of the actions before it in order to move forward this evening. He noted that the Agency Board has already moved the \$2.7 million into the aquatic center in order to move forward with that project. Also, the City is not currently developing the outdoor recreation center. Therefore, the \$2.7 million is not needed at this time. If it was needed, he noted that there are other projects that the City has not started that the City could be using the monies from while the Agency Board is having the larger conversation.

Chairman Kennedy said that the baseball and softball organizations have the expectations that funds were earmarked for the sports complex. By not allocating funds, these organizations may think that this is a shift of their funds to the aquatic center.

Agency Member Carr stated that it was his expectation that it would cost more than \$2.7 to complete the outdoor sports complex.

Vice-chair Chang recommended that the Agency precede with actions 1, 3 and 4 and direct the Executive Director to look into the possibility of implementing action item 2.

Chairman Kennedy recommended that a workshop be held to have the broader discussion and look at the list of projects in order to determine whether other sources of revenues are needed or there be an elimination of a project based on the workshop. He noted that the Agency Board requested that the PRC come forth with a recommendation. The recommendation is one that addresses the needs of the majority of the recreational advocates at this time and that he would like to move forward.

Agency Member Sellers stated that he would support removing action item 2 if it is the preference of the majority. He said that he would agree to use development impact fees for a greater number of kids as opposed to acquiring a pocket park in a specific neighborhood. He felt that the need was acute and that the Agency is appropriately addressing it with these funds.

Vice-chair Chang said that she would support retaining action item 2 as it is an item that the Executive Director can return at a later date for implementation.

**Action:**        *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 3-1 with Agency Member Carr voting No and Agency Member Tate absent, **Allocated** \$2.7 Million of the Parks Development Fund to Pay for the Outdoor Sport Complex.*

**Action:**        *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 3-1 vote with Agency Member Carr voting no and Agency Member Tate absent, **Increased** Development Impact Fees to Reduce Impact of \$2.7 Million Allocation.*

**Action:**        *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 3-1 vote with Agency Member Carr voting no and Agency Member Tate absent, **Re-allocated** \$2.7 Million in RDA Funds Previously Earmarked for Outdoor Sports Complex to the Aquatics Complex.*

**Action:**        *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 3-1 vote with Agency Member Carr voting no and Agency Member Tate absent, **Stipulated** That Contingency Funds Transferred to the Aquatics Complex that are not used, shall be **Returned** to the Park Development Fees Fund.*

**Action:**        *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 3-1 vote with Agency Member Carr voting no and Agency Member Sellers absent, **Stated** that this is a high priority project and that it should get underway.*

**Action:**        *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Chang, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent; agreed to extend the meeting time to 12:00 a.m.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Workshop on RDA prioritization.  
ABAG/MTC Merger  
Assistance to Homeless  
Workshop on City's water system.

#### **RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 11:15 a.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 12:15 a.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:16 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**